

STATEMENT OF SENATOR JOHN McCAIN
CHAIRMAN, SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION
FULL COMMITTEE HEARING
ON S. 2494, THE MULTICHANNEL
VIDEO COMPETITION ACT OF 1998
OCTOBER 1, 1998

- Good morning. Today we are going to discuss two things: the problems satellite TV companies have in offering their subscribers television broadcast stations, and the problems that *all* consumers -- whether they subscribe to satellite TV or not -- are going to face if these problems cannot be resolved.
- Our witnesses this morning will be Andrew J. Fisher, Executive Vice President, Television Affiliates, Cox Broadcasting Company; K. James Yager, President and Chief Operating Officer, Benedek Broadcasting Corporation; Charles C. Hewitt, President of the Satellite Broadcasting Communications Association; and Gene Kimmelman, Co-Director of the Washington Office of Consumers Union. Gentlemen, welcome, and thank you for agreeing to testify today.
- Our framework for this hearing is legislation I introduced earlier this month, the Multichannel Video Competition Act of 1998. This legislation is intended to settle longstanding competitive disputes among the satellite TV, broadcast TV, and cable TV industries about how and when satellite TV companies should have to carry local TV stations, and how and when they should be permitted to carry distant TV stations.
- This legislation would work in tandem with another bill offered by Senator Orrin Hatch. Senator Hatch's bill would, for the first time, clear the way for satellite TV companies to offer their subscribers local TV stations. My legislation would settle longstanding competitive disputes among the satellite TV, broadcast TV, and cable TV industries about how and when satellite TV companies should *have* to carry *all local* TV stations, and how and when they should be *permitted* to carry *any distant* TV stations.
- In resolving the distant TV station issue, my legislation would also avert one immediate problem. Litigation between the broadcast TV and satellite TV industries has produced a court decision that, without this legislation, may cause hundreds of thousands of satellite TV subscribers to lose the distant network stations they now receive -- even if they can't otherwise receive local TV stations off the air.

- It's obvious why satellite TV consumers would benefit from resolving these issues sensibly and fairly. But *all other* television viewers have a stake in resolving them, too.
- Being able to provide local TV stations will help satellite TV service compete more effectively with cable TV, and that in turn could help hold down cable rate increases. Since 1996 cable TV rates have spiraled up four times faster than the Consumer Price Index, and most existing cable rate regulation is set to expire by law next April. Without effective competition to hold down cable rate increases, cable TV consumers may find themselves at the mercy of rate increases imposed at will by an unregulated provider of a monopoly service.
- Consumers who view television off-air have important interests at stake today, too. Local TV stations could lose critical audience mass if satellite TV companies can carry distant stations throughout the local market, especially if they do not carry the local stations. Audience loss translates to revenue loss, and revenue loss could be so substantial that a local station's ability to serve its off-air viewers could be seriously affected.
- Those are the problems we are grappling with this morning. Now, let me tell you where we seem to be heading.
- This legislation's aim is to vindicate the *complementary* interests of satellite, cable, and broadcast TV *viewers* by balancing the *competitive* interests of the satellite, cable, and broadcast TV *industries*. The industries' representatives have all worked diligently over the course of the last several weeks to define and improve that balance. But despite these efforts, as of now neither the satellite TV nor broadcast TV industry is prepared to take the final steps necessary to embrace a compromise that will give the *public's* interest precedence over the *industries'* interests.
- In saying that I do not accuse either the broadcast TV or satellite TV industries of acting in bad faith. On the contrary, they are being faithful to their duty, which, as private enterprises, is to make their businesses as successful as possible. That's their job. I don't fault them for doing their job.
- But that's **not** my job. My job is to make sure that, out of all the lawyers' clamor and lobbyists' claims of impending doom, common sense emerges from this situation and the public's needs are met. And what will emerge from a continuation of the industries' current self-interested impasse will in no way pass for common sense and the public's interests.
- I am, for example, at a loss to explain why it's common sense and in the public

interest to have a satellite TV customer's distant network channels go dark just because the law says that local stations have the legal right to *make* them go dark -- even when that satellite TV customer doesn't get local network signals off-air. Or that the same law helps that consumer by telling him or her that local network stations are available simply by building a thirty foot-high tower, and if you can't do that, why, just subscribe to cable. Now *that's* really going to satisfy consumers and keep cable rates down.

- I also find it hard to argue that it's really in consumers' best interests for local broadcasters to block satellite TV companies from carrying local TV signals just so cable TV rates either can continue to increase without constraint or Congress launches yet another repressive and ultimately misguided regime of cable regulation. Or that it's really good for consumers for Congress to perpetuate a regime where the legal definition of a decent off-air signal is so narrow that it forces satellite TV companies either to engage in an endless series of individual signal measurements or else to continue to break the law in order to make a profit and avoid consumer confusion and ill-will.
- No, I don't expect the average consumer would see the "public interest" in quite the same terms as the broadcast and satellite TV industries seem to. But I must also confess that I fail to see how either of the industries realistically see this stalemate as serving *their* interests either.
- Understand what is, and is not, at issue here, from the perspective of these industries. As things stand now, no mandatory carriage rules apply to satellite TV carriage of local signals, and none will apply without legislation. So when broadcasters announce that they would "consider" legislation "allowing" satellite TV companies to carry fewer than all local stations if Congress meets certain conditions, the magnanimity of the offer is reduced somewhat by the realization that satellite TV companies don't have to carry any local signals *at all* right now. And if Senator Hatch's legislation is enacted while the industries stall Commerce Committee legislation, the result would be that satellite TV companies will be allowed to carry local stations scot-free of *any* mandatory carriage obligations whatsoever.
- But of course, this scenario isn't likely to happen. The fact is, broadcasters have the power to block virtually *any* legislation from passing the Senate, and I have no doubt they would exercise it against Senator Hatch's bill. Of course, if they do so and thereby prevent satellite TV companies from carrying a local broadcaster's signal to viewers in the broadcaster's own market, you have to wonder why they think that's a good result.

- There is another area in which broadcasters appear to compromise their own interests by refusing to compromise with others'. Right now there is *no* limitation on how the FCC could redefine a station's local coverage area in its pending rulemaking proceedings -- giving rise to potential outcomes that local broadcasters would, I think, devoutly wish to avoid.
- But here's the twist on that one. Without the Commerce Committee legislation that the broadcasters are helping to block, it's very doubtful that *any* attempt by the FCC to revise its definition of what constitutes a decent off-air signal is unlikely to stand up in court. In fact, the broadcasters are telling the FCC so in the FCC's open rulemaking proceeding. And if the broadcasters block any new FCC definition in court -- which they say they can and will do -- the result will be that, come next spring, this new broadcast industry lawsuit will put us all right back where we are today: with the broadcast industry's lawyers brandishing a court order that forces satellite TV companies to turn off hundreds of thousands of subscribers' distant network signals.
- Let me assure you: the lawyers and the lobbyists have lawyered and lobbied the satellite and broadcast TV industries into a place that *neither* industry wants to be in. And more lawyering and more lobbying isn't going to get them out. It's only going to get them in deeper.
- So the bottom line is this: in this matter, continued stalemate simply makes no sense, not for any of the industries involved, and above all not for consumers. The satellite TV and broadcast TV industries have an extremely small window of opportunity to achieve a sensible result, and that small window is closing.
- I remain confident that the legislation before you contains the elements of a sensible result. I am also confident that we can take other steps to strike fair balances, provided there is genuine willingness on both sides to make the compromises necessary to strike them. But this seems to be one of those unfortunate cases in which each side is allowing its own 'best' to become the enemy of the common 'good.'